

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Mohammed El Kalouchi :
Plaintiff, :
v. : Case No. 2:08-cv-1021
U.S. Department of Justice, : JUDGE SMITH
Defendant. :

REPORT AND RECOMMENDATION

Mohammed El Kalouchi, a state prisoner, has submitted a complaint and a request to proceed *in forma pauperis*. The named defendant is the United States Department of Justice. According to the complaint, the plaintiff is about to be released from prison and is facing deportation. He argues that the process leading to the deportation order was flawed and that he is entitled to an order from this Court delaying his deportation.

When he submitted his application, Mr. El Kalouchi did not submit the required trust fund statement from his institution. The Court directed him to do so, and he has complied with that order. The Court will be issuing a separate order assessing an initial filing fee. This Report and Recommendation constitutes the Court's initial screening of Mr. El Kalouchi's complaint under 28 U.S.C. §1915. For the following reasons, it will be recommended that the case be dismissed for lack of jurisdiction.

Essentially, Mr. El Kalouchi is appealing from an order issued by the Board of Immigration Appeals denying his request to reopen his deportation case. The only federal courts which have jurisdiction over appeals from the Board of Immigration Appeals are the United States Courts of Appeals. See 8 U.S.C. §1252. A

United States District Court can exercise jurisdiction in such matters only under extremely limited circumstances, none of which are present in this case. See 8 U.S.C. §1252(q); see also Moussa v. Jenifer, 389 F.3d 550 (6th Cir. 2004). Even the Court of Appeals may not have jurisdiction over this claim, since it appears to involve a discretionary refusal by the Board to reopen proceedings. See Harchenko v. INS, 379 F.3d 405 (6th Cir. 2004). Nevertheless, it is clear that this Court has no jurisdiction to hear Mr. El Kalouchi's claims and that his remedy, if any, lies in an appeal to the United States Court of Appeals for the Sixth Circuit. Therefore, the Court is required to dismiss this action for lack of jurisdiction, and that dismissal is recommended.

PROCEDURE ON OBJECTIONS

If any party objects to this Report and Recommendation, that party may, within ten (10) days of the date of this Report, file and serve on all parties written objections to those specific proposed findings or recommendations to which objection is made, together with supporting authority for the objection(s). A judge of this Court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. Upon proper objections, a judge of this Court may accept, reject, or modify, in whole or in part, the findings or recommendations made herein, may receive further evidence or may recommit this matter to the magistrate judge with instructions. 28 U.S.C. Section 636(b)(1).

The parties are specifically advised that failure to object to the Report and Recommendation will result in a waiver of the right to have the district judge review the Report and Recommendation de novo, and also operates as a waiver of the right to appeal the decision of the District Court adopting the Report and

Recommendation. See Thomas v. Arn, 474 U.S. 140 (1985); United States v. Walters, 638 F.2d 947 (6th Cir.1981).

/s/ Terence P. Kemp
United States Magistrate Judge